IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.226 OF 2000

Raju Babu Kambli ...Appellant
(presently lodged at Daman Jail (Orig. Accused)
as convict)
Vs.
The State of Maharashtra and
Union Territory of Daman ...Respondents

Mrs. Teja Katdare with Ms. Alpa Zaveri for Appellant
Mr. A.R.Patil , Addl.P. P for the Respondent No.1
Mr. D.A. Nalawade, A.P.P for the Respondent No.2

CORAM: DR. S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.
DATED: 28TH SEPTEMBER, 2007

JUDGMENT (Per Smt. Roshan Dalvi, J.)

1. The appellant/accused, who is the husband of the deceased victim has been charged, convicted and sentenced for committing the offence of murder of his wife under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and pay a fine of Rs.1000/- in default to suffer Rigorous Imprisonment for 6 months.

2. The appellant/accused and the victim were married on 15th March, 1996. The appellant is stated to have committed the murder of his wife on 15th March, 1999, the 3rd anniversary of their marriage.

3. It is the case of the prosecution that the accused suspected the fidelity of his wife and hence, in the late night – early morning hours (almost at midnight) of 15th March, 1999 he stabbed his wife. There are no eye witnesses to the offence of murder. The offence has taken place in a small hamlet called Kachigam in the town of Daman which is a Union Territory. The appellant left his home on his scooter at about 12.15 a.m on 16th March, 1999. The neighbour of the appellant one Rukiben, whose house was admittedly in front of the house of the accused, saw the appellant go on the scooter upon she hearing the noise of the scooter engine at that time. The victim is stated to have screamed for help. The neighbour went to her house and saw her wounded and

lying in a pool of blood. Her child, who was then an infant of about 1 year was in the house. She called her brother who came with his wife. The brother's son called the mother and brother of the victim who lived 3 kms away. The Police received a telephonic message of some quarrel on that night and reached there. The deceased/victim is stated to have made 4 oral dying declarations, first to the neighbour Rukiben, then to Rukiben's brother Raghu and to her brother and also to the Police Officer who came at the scene of the offence upon the telephonic message. The victim died in the hospital, after giving 4 dying declarations as aforesaid.

4. It is further the prosecution case that the appellant/accused was last seen by the Complainant who is the brother of the deceased/victim at about 9.30 hours that evening when the brother and mother of the deceased attended her house upon being called on the premise that the appellant was to attend night shift and the victim would be alone in her house with her infant child, so that the

mother could spend the night with her. Though the brother and mother attended as called upon by a message given by Vijay, the victim's brother's friend, the appellant was in the house and hence, they departed.

5. The offence took place after such departure. They returned upon being called.

6. It is the prosecution case that the appellant was arrested within a couple of hours of the incident. The Police Officer received the message that the appellant/accused, who is the husband of the victim, had left. He therefore, went on his motor-cycle in search of him. The appellant was on the only motor-cycle which was the only vehicle on the road in that village at that hour. He had sustained an injury to his right thumb. His clothes had blood stains. He was arrested and brought to the Police Station at about 2.00 a.m.

7. His voluntary disclosure led to the recovery of a knife

which was stained with blood from the rear side of his house. The blood stained clothes of the appellant/accused which were on his person at the time of his arrest, were seized. The clothes of the victim were also seized and inquest panchanama was prepared. The Postmortem Report was obtained. It shows as many as 15 injuries, 5 of which were fatal. They have been opined by the Doctor to be sufficient to cause her death. It has also been opined that they could have been caused by the knife such as the knife produced in Court and shown to the Doctor.

8. The appellant/accused has not explained his injuries. The appellant/accused has also not explained his absence in the house. However, in the evidence of the complainant, it was his case that he was on night shift duty. Such a case, which is in the nature of alibi, has not been substantiated.

9. The case of the accused/appellant is a mere denial. It is contended by Mrs. Katdare on behalf of the

appellant/accused that the case rests on circumstantial evidence, there being no eye witness to the offence. It is contended by her that the chain of events, showing that it was the only appellant/accused who committed the offence of murder of his wife, is not complete and hence, the appellant/accused deserves to be given the benefit of doubt. To raise such reasonable doubt she has contended that a road passes between the house of the appellant and Rukiben and hence the seminal case of the prosecution that Rukiben heard the scooter noise and saw the appellant, as also that she heard the scream of the victim cannot be believed. She contended that recording the statements of Rukiben as also of the other witnesses has been long delayed, they having been recorded on 17.3.1999, the next day after the incident and hence, leaving them ample opportunity to falsely frame the accused. She also contended that the recovery of the knife cannot be relied upon as corroboration because it has been recovered from an open space, its measurements were not taken in the presence of the panchas and the Station

Diary entry to the effect of its recovery has not been made. She further contended that the knife was found bent and the evidence of the Doctor shows that the injuries of the victim as shown in the Postmortem Report, could not have been caused by such a bent knife. She has further argued that at one place in the evidence of one of the 2 panchas relating to the recovery of the knife, the timing is shown to be 6.00 to 7.30 in the evening and not 6.00 to 7.30 in the morning.

10. The prosecution case in the trial has been also based upon an extra judicial confession of the accused/appellant made to the Doctor by way of stating his medical history, when he was sent for examination by the Investigating Officer. The Doctor's evidence as well as the Medical Certificate shows the history given by the patient, that the appellant/accused sustained the injury whilst hitting his wife. That aspect has not been put to the appellant/accused whilst recording his statement under Section 313 Cr.P.C. It is, therefore, rightly contended that, that aspect cannot be

used against the appellant/accused as has been done by the trial Judge.

11. The learned Counsel also contended that the fact that the appellant/accused was sent for medical examination cannot be relied upon by the prosecution because a Station Diary entry to that effect has not been made.

12. It can, therefore, be seen that the prosecution case that the appellant/accused having murdered his wife must be tested upon the last seen theory, the oral evidence of the witnesses inter alia containing 4 oral dying declarations, the motive of the accused, the total lack of enmity or grudge of any of the witnesses who deposed against him, the medical evidence contained in the P.M. Report, the oral evidence of the Doctor, the oral as well as documentary evidence relating to the injury caused to the accused/appellant himself, showing his presence at the scene of the offence (albeit without the extra judicial confession in the form of the

patient history given by the accused/appellant), the fact of his immediate arrest within a couple of hours on the same night and the attempt of the accused/appellant in raising up plea of alibi but not substantiating it coupled with the fact that he had not explained his absence after the incident.

13. The prosecution case has been set out in the evidence of 13 witnesses. The complainant is the brother of the victim, Nitin examined as P.W.1 who has deposed how he went to the house of the victim his sister Sangita in the evening on that day before the incident and how he was called by the same friend after the incident. He has deposed about what he saw as soon as he reached the house and how he lodged the complaint. He has been examined as P.W.1.

14. Rukiben, the neighbour, who saw the appellant/accused riding the scooter and who heard the call of Sangita and went to her house, has deposed about what she saw and heard after the incident. She has been examined as P.W. 2.

Her brother Raghu in whose room the appellant and the victim lived as their tenant/ lessee and who was called by his sister Rukiben has also deposed about what he saw and heard after the incident in the house of the victim. He has been examined as P.W.3.

15. There are several panchas who have been examined as P.W.4,6 and 9 for recovery of the clothes of the deceased, the clothes of the appellant, recovery of the knife from the scene of the offence.

16. The Doctor who conducted Postmortem of the victim has been examined as P.W.5. He has deposed about the 15 injuries suffered by the victim as well as about the sufficiency of those injuries to cause death with a sharp weapon such as a knife produced before him. He has produced and proved the Postmortem report that is marked **Exhibit-24**.

17. P.W. 7 is a Vendor, who sold the knife to the accused/appellant earlier the same evening but whose evidence has not been believed or relied upon by the learned trial Judge.

18. The friend of Nitin who gave the message as aforesaid in the evening to the mother and brother of the victim and who also called them after the incident has been examined as P.W.8. He is the immediate neighbour of the deceased being the son of Raghu, P.W.No.3 in whose room the appellant/accused and deceased resided.

19. P.W.No.10 is the Police Officer who received the telephone call from Head Constable about the quarrel which took place at village Arjan Falia, Kachigam, Nani Daman and who came to the spot. He has deposed about the last dying declaration made by the deceased to him, before being shifted to the hospital where she expired. He has also arrested the accused/appellant upon suspicion at being on the road in

the night hours on a motor-cycle. He has deposed about the investigation done by him by way of various panchanamas relating to the recovery of knife, seizure of the clothes and the recording of the inquest panchanama.

20. P.W. 11 is the Doctor who examined the accused/appellant and who identified the accused/appellant in Court as having been examined and who has deposed about his injury and produced the Medical Certificate marked Exhibit-36 in evidence. P.W. 12 is the Head Constable who received a message telephonically and who telephoned the Police Officer P.W.No.10. P.W. No.13 is the Police Officer who took up the later investigation.

21. To understand the incident and the consequent investigation, all of which took place in a matter of hours corroborative incidents and dates must be first set out :-

(i)The appellant/accused and the victim were married

on 15th March, 1996.

(ii)On 15th March, 1999 at about 8.00 p.m one Vijay, who is the friend of the brother of the victim, met the victim at grocery shop of one Ganesh which is next to the house of the appellant/accused and the victim. He was told by the victim that the accused/appellant would be on night shift and hence, a message be given to the mother of the victim to come to her residence to spend the night with her whilst she would be alone with her child.

(iii)At about 9.00 p.m. Vijay gave a said message to his friend Nitin who is the brother of the victim after dinner time.

(iv)At about 9.30p.m. Nitin and his mother came to the house of the victim. They saw the accused/appellant there. Hence, they departed.

(v)At midnight or 12.15 a.m. Rukiben, P.W. No.2 heard the noise of a scooter and saw the accused/appellant go. She heard the call of Sangita “Fui Fui”. She went to the house of the victim. She saw the victim and heard her dying declaration. The

victim told her to give a message to her house.

(vi)At 12.30 a.m. Vijay went to the house of the brother of victim, Nitin. He informed Nitin about the incident who came there with his mother.

(vii)At 12.45 a.m. Head Constable P.W. 12 received an anonymous telephone call of mara-mari at the place where the victim resided. He informed the Police Officer, P.W. 10, who investigated the case.

(viii)The Police arrived at the house of the victim. The victim told the Police Officer P.W.10 about what happened. She was shifted to the hospital.

(ix) Within 10 minutes, she expired.

(x)At 2.00 a.m. Nitin, the brother of the victim P.W. 1 lodged his FI.I.R Exhibit-15.

(xi)The Police Officer P.W.10 went out on his moto-cycle to apprehend and arrest the accused/appellant. He found the accused/appellant on a motor-cycle which was the only one on the road at that time. He apprehended him on suspicion, as

he found him to be having an injury.

(xii)At 2.30 a.m he arrested the accused in interrogated him until 5.00 a.m. He called certain panchas to effect the recovery consequent upon a voluntary disclosure which the accused/appellant offered to make.

(xiii)At 6.00 a.m the panchas P.W.6 and P.W. 9 went to Daman Police Station.

(xiv)At 6.00 a.m they left Daman Police Station. Between 6.00 a.m. To 7.30 a.m they recovered the knife at the instance of the accused from behind the house of the accused.

(xv)At 7.30 a.m the accused/appellant was sent to the hospital and examined by the Doctor P.W. 11 who prepared the certificate Exhibit-36.

(xvi)At 7.50 a.m. Panch and the Police Officer P.W.10 returned to the Police Station.

(xvii)Between 9.00 a.m. To 10.15 a.m. P.W. 10 went to the hospital, prepared the inquest panchanama and

seized the clothes of the deceased.

(xviii)At 11.00 a.m. P.W.9 was again called and spot panchanama was prepared.

(xix)At about 2.00 p.m. P.W. 10 seized the clothes of the accused/appellant under panchanama and made the spot panchanama.

(xx)At 4.55 p.m the Police Officers returned to the police station.

(xxi)On 17.3.1999 the Investigating Officer recorded the statements of Rukiben P.W.2, Raghu P.W.3, Vijay P.W. 8 and one Kankuben.

22. The Station Diary entries were made showing registration of Crime No.47 of 1999 under Section 302 of the Indian Penal Code (I.P.C.) at the relevant time at 2.00 a.m on 15th March, 1999, the arrest of the accused at 2.30 a.m., followed by the accused/appellant being taken with the 2 panchas in a police jeep for drawing up of panchanama at 7.00 a.m, the Investigating Officer P.W.10 having left for investigation at

2.20 p.m and his return at 4.55 p.m. There are no station diary entries showing the separate stages of investigation after the Police Officer P.W. 10 left at 2.20 p.m. And before he returned at 4.55 p.m., a fact for which strong exception has been taken by Mrs. Katdare on behalf of the appellant/accused.

23. The prosecution case is required to be examined based upon the aforesaid chronology.

24. The evidence of P.W.1, the brother of the victim, shows that the accused/appellant suspected the victim Sangita, his sister. He deposed that on 15th March, 1999 Vijay came to his house after he had dinner. Vijay informed him that Sangita had sent a message that her husband is not at home and therefore, his mother should go and sleep with her. He took his mother on his scooter to the house of the accused/appellant. However, appellant/accused was present in his house. They chit-chatted for 10 to 15 minutes

and returned home. On that same night at 12.30 a.m. Vijay again came home and informed him that the appellant/accused has stabbed Sangita with a knife and had run away. He said that Sangita would be required to be taken to the hospital. Therefore, his mother and he went to her house. The door was open, the light was switched on. Sangita was lying on the floor, bleeding. She was talking, he asked her what had happened. Sangita stated to him that at about midnight the appellant/accused woke-up and said that she had illicit relations with Ganesh. (He is the next door neighbour who run a grocery store). She narrated that the accused had a knife in his hand and said that he would kill her. He took out a bottle of poison and forced her to drink. Thereafter, he stabbed her on her chest, stomach, legs and hands and went away. He further deposed that the police arrived and took Sangita to Marwad hospital. His mother, Raghu kaka, P.W.3, Rukiben, P.W.2 and he himself went to the hospital in the police jeep. After about 15 to 20 minutes Sangita died. He lodged his complaint Exhibit-15.

25. He has been extensively cross examined. The case of the accused/ appellant is that he worked in a mechanical company at Somnath and was on shift duty, has been admitted by P.W.1. He has volunteered that the appellant/accused rarely went on night duty and whenever he had night duty they were informed. He admitted the fact that the accused had hired the room of Mahesh Raghu (the son of Raghu P.W.3) who is his friend and who is the brother of Vijay, the messenger. They reside 150 to 200 ft away from the house of the accused/appellant. He deposed that he himself resided about 3 Kms., away.

26. His cross examination further showed that Rukiben P.W.2, Raghu kaka P.W.3 and one Kankuben were present when he had arrived. Vijay had followed him on his return journey on a Scooter. His cross examination shows that Vijay was informed by Rukiben who sent him to fetch the brother and mother of the victim. He has deposed about the

blood which was on the kachha floor of the house of the victim, much of which had been absorbed. He had refuted the suggestion that Sangita had not spoken to any one including him. He has however, accepted as true that nobody had talked with the victim in the jeep when she was taken to the hospital. He has twice refuted the suggestion that Sangita was unconscious – in her house as well as in the jeep. In paragraph 11 of the cross examination he has re-iterated that Sangita had mentioned about the incident to Raghu, Rukiben and Kankuben including the fact of poison as well as stabbing. An attempt has been made in his cross examination to show an affair between Santiga and Ganesh. Whilst refuting the affair, P.W. 1 has deposed that he knew Ganesh who lived next to Sangita and who had good relations with Mahesh, the brother of Vijay, son of Raghu. The main case put to this witness was that the accused was on night duty during that night and had gone on his duty, which case has been refuted. It may be mentioned that, that case is in the nature of alibi which has not been

substantiated by the accused/appellant in his 313 Statement or otherwise. Such a case has not been put to any other witness.

27. The crux of his evidence is the dying declaration of the victim. The detailed dying declaration set out in the examination-in-chief has not been upturned in his evidence. The suggestion of the victim being unconscious has been twice refuted. The fact that the victim never stated anything to anybody else has also been refuted. The fact of the accused having night duty at some time has been brought out in the evidence coupled with the fact that on those dates, which were rare, the witness and his family were informed. This evidence shows that the victim did not desire to spend the night alone with her infant child when her husband was a way. On such occasions she sent for her mother. That itself shows the total lack of any possibility of an affair. If she had any affair with her neighbour Ganesh who was a grocer, she would not have sent for her brother and mother

that evening. The fact that the mother and brother came to her house at about 9.30 p.m upon being informed has not been refuted in the cross examination. However, the case of the appellant/accused that he was having night duty on that night has been denied by P.W.1. The evidence shows the clear character of the victim in the attempt of the husband to show the alibi for the denial of the prosecution case.

28. The dying declaration set out in the FIR is much the same as that deposed in evidence. It contains the fact of the affair alleged to be between Sangita and Ganesh, the accused/appellant wanting to kill her, the factum of the poisoning as well as stabbing her on stomach, back and hands with knife. The material part of the dying declaration as deposed stands corroborated in the FIR. A reading of translation in English of the F.I.R, Exhibit- 15, in the case papers, shows that the translation is incorrect.

29. The translation shows the continuation of the Dying Declaration further that within a short time Rukiben P.W.2, Raghu P.W.3 and Kankuben arrived at the place of incident. It further shows that Sangita narrated her story to them. We have gone through the FIR Exhibit-15 in Gujarati language. The FIR shows the dying declaration in the first person by the use of the pronoun "I" throughout. It is translated in English also in the first person. However, the fact that Rukiben, Raghu and Kankiben arrived in the house of the victim is the continuation of the dying declaration in the original Gujarati FIR. That is shown by the conjunction "And". It is specifically shown by the term **"ANE" "THODI VAARMA."** it therefore, shows the continuation of the fact that the accused/appellant attacked her with a knife which he took with him and after which Rukiben, Raghu and Kankuben arrived at her house to whom also she narrated the story. The fact of the narration of the incident made by Sangita to Rukiben, Raghu and Kankuben is also a part of the dying declaration deposed by P.W.1. P.W. 1 deposed

about the dying declaration made to him. In his cross examination he has refuted the suggestion that Sangita had not talked with anyone else or the police. That part of his evidence shows only what transpired in his presence, after he arrived. He has further deposed that when he reached the house Rukiben, Raghu and Kankuben were already present, but the Police had not arrived before him.

30. Hence, his evidence shows that Rukiben, Raghu and Kankuben had arrived before him and his mother. The police arrived thereafter. The deceased was not unconscious. She was talking. She narrated the incident to him and had also talked to others. She also talked to the police after he arrived. There were however, no talks in the jeep. Consequently all the 4 dying declarations are shown to have been made at the house of the victim itself. The cross examination of the witness has not upset the fact of the dying declaration made to him.

31. P.W.No.2 Rukiben was the first to arrive in the house of

the victim. She has deposed that after midnight she heard the noise of the scooter of the accused, she saw the accused going away on the scooter. There after she heard a call of Sangita “Fui Fui”. Her door was open, the light was switched on. Her son was crying. Sangita was lying on the ground with injury on her person. Sangita told her that her husband had stabbed her and ran away. Such is the dying declaration of Sangita made to Rukiben first.

32. Rukiben called her brother who lived next door. She narrated this to her brother and her sister-in-law. She sent her nephew Vijay to fetch Sangita's mother and brother. Her sister-in-law took away Sangita's son who was crying. Thereafter Sangita's mother and brother arrived.

33. It is argued on behalf of the appellant/accused that Rukiben's deposition is not reliable or credible because she lived far away and she could not have seen the appellant/accused go away on scooter or heard the cries of

Sangita. 313 statement of the accused/appellant itself shows that Rukiben lived in front of his house. A road separated the two houses. That is a village road. It goes between village Kachigam and the Royal Distillery. It is not a highway. Though the cross examination of Rukiben does show that the road has constant vehicular traffic, such constant traffic is not expected at midnight on that road. It may be mentioned that the Police Officer, P.W. 10 who went in search of the accused on his motorcycle in the village has also deposed that the accused/appellant was the only one in a vehicle on the road that night. The fact remains that Sangita had various injuries and was shifted to the hospital. She had none except her infant son at home. It is not even the appellant's/accused's case that he shifted her to the hospital. Hence, some one who is a neighbour would be required to aid and assist Sangita in hospitalising her. Since Rukiben was her neighour, it is expected that she would render her assistance. There is nothing to show that she could not have heard either the noise of the accused's

scooter or the cry of Sangita for help. Once that is established, the first dying declaration made to her stands proved.

34. She has affirmed that Sangita was not unconscious. Her cross examination shows further affirmation about the dying declaration made to her by Sangita that her husband has stabbed her and ran away. That itself is sufficient to prove the prosecution case against the accused.

35. It may be mentioned that aside from the exercise of showing how Rukiben could not have come to the house of the victim there has been no denial of the dying declaration in her cross examination. Her evidence shows that she knew the complainant and the accused only from the time when they came to live in that house. That was barely for 2 or 3 months. She cannot be taken to be a partisan witness.

36. P.W.No.3 Raghu is the brother of Rukiben and the

immediate neighbour of the victim on the other side of her house. He lived with his two sons Mahesh and Vijay. He is largely referred to as the landlord of the accused and the victim. The room of this witness or his son Mahesh was licensed to the accused. His evidence is much the same as that of his sister. He has described how at about 12.30 a.m his sister gave him the message and called him over to the house of the victim. He went there with his wife. He has described what he saw and heard. The description is the same as that is given by Rukiben – Sangita was lying on the ground light was switched on, her child was crying. Sangita was crying, she was talking and she stated that her husband has stabbed her and then ran away. That is the second dying declaration of Sangita. He also did not know the accused and the victim before they moved into his room, which was about 2 or 3 months prior to the incident. He is, therefore, not a partisan witness. In his cross examination he has affirmed that his sister came to his house to give him the message and called him to the house of his licensee. He

has also affirmed that Sangita was not unconscious.

37. He deposed about the arrival of the police. That was about 5 or 10 minutes after they went to Sangita's house. He has deposed that Sangita was as good as dead when she was put in the vehicle. The fact that Sangita died soon thereafter that morning, itself lends support to his statement that she was as good as dead when she was put in the vehicle. That was after Sangita's 4 dying declarations were made. 2 of them were made after the dying declaration made to him. That was after Sangita's mother and brother came and thereafter when the police came. It is sought to be contended that she could not have made the dying declarations. That argument cannot be accepted. Dying declarations were made before the witnesses prior to the death of Sangita. There is nothing to reject the evidence of Rukiben and Raghu with regard to both the dying declarations which are consistent with each other.

38. P.W.No.8 is Vijay, the son of Raghu, who fetched the mother and brother of Sangita after she was stabbed. He has deposed about the incident that transpired after 12.30 a.m. When Rukiben, his paternal aunt (Fui) knocked the door of his house and woke up his father, mother and himself. She narrated the fact of the stabbing and called them out. Whereas the father and mother went to the house of Sangita. He went to call Nitin on his scooter. He returned with Nitin and his mother. They came on 2 scooters. Thereafter the police arrived.

39. Though he has omitted to mention about dying declaration in his statement to police, his evidence goes to the extent that it links the prosecution case of the mother and father being informed about the incident and they having arrived at the house of Sangita.

40. As per the deposition of Nitin, P.W.1 it was Vijay who was sent by Sangita to inform about the night shift of her

husband to call her mother over to spend the night with her. Vijay has omitted that entire incident in his examination in chief. Strangely he has been cross examined on that fact. While in his cross examination he has deposed how on 15th March, 1999 Sangita had met him at 8.00 p.m in the shop of Ganesh adjacent to the room of Sangita to give the message. Hence, in his cross examination the earlier incident deposed by Nitin has been corroborated. After questioning him in the cross examination to bring out the entire incident he has refuted the case that Sangita had not asked to give the message.

41. It is the contention on behalf of the accused/appellant that he was on night shift as per the case put to Nitin, P.W.1. If he was on night shift he would not have been available at about 9.30 p.m when Sangita's mother and brother came to her house. They would not have come if Vijay had not given the message and Sangita had not called them. If the deposition of Nitin and Vijay about the incident of the

evening of 15th March, 1999 is not correct, the accused would not have had night shift and he would be expected to be in the house with Sangita during the entire night between 15th March, 1999 and 16th March, 1999. In that case the absence of the accused in his house at the time of her incident is not explained. The statement of the accused shows that he loves his wife and has one son. He has not shown that he was on night duty. He has not explained his absence. He has not shifted her to the hospital. He was arrested on the road within a couple of hours.

42. P.W. 10, the Investigating Officer in the case, P.S.I. Vaza was sent by Head Constable Kale, who had received an anonymous telephone call at 12.45 a.m about a quarrel at Arjan Falia, Kachigam. He took 2 Constables with him and reached the place. He went into the house of Raghu who is the landlord. He saw Sangita lying in a room which was open with bleeding injuries. He has deposed that the injured lady told that her husband had stabbed and fled. This is the

4th and the last dying declaration made by Sangita to the Police Officer.

43. It may at once be mentioned that each of the dying declarations are consistent with regard to the core content i.e that Sangita stated that her husband stabbed her and ran away. Whereas the dying declaration deposed by Nitin is more detailed and speaks also about the accusation made by the accused that Sangita had illicit relations with Ganesh as also about the poison that he forcibly made her drink, and details of the parts of her body which received stab injuries, the deposition of Rukiben speaks only about the stabbing by the accused and his running away. Similar are the dying declarations deposed by Raghu and the Police Officer. The fact of the accused stabbing her and fleeing is established in 4 consistent oral dying declarations made one after another while she was in her house on the ground after receiving a number of injuries.

44. The Police Officer has further deposed that he took her in a van to Marwadi hospital. She died 5 or 10 minutes after reaching the hospital.

45. He has deposed about the registration of the case by Nitin at Daman Police Station, the arrest of the accused immediately upon registration, recovery of the knife at the instance of the accused, recording of the inquest panchanama, seizure of the clothes of the deceased as well as the accused, the execution of the spot panchanama, the maintenance of the station diary entries and the C.A.'s report.

46. His deposition shows that immediately after registering the offence he went on his motorcycle to Kachigam to find out the accused. He saw the accused coming from the opposite direction on his scooter. He suspected him to the accused as he saw blood on his hands. The accused stated his name. The Officer arrested him and brought him to the

police station.

47. It can be seen that the Officer immediately commenced the investigation. He arrested the accused within 2 hours of the incident. By 5.00 a.m he called the panchas as the accused desired to make a voluntary statement after being interrogated. The above chronology shows how the Officer was busy with investigation of this case from 5.00 a.m to 5 minutes before 5.00 p.m when he returned to the Police Station after completing the entire investigation except recording statements of neighours and other witnesses.

48. It is contended on behalf of the accused by Mrs. Katdare that the statements of the neighbours are recorded on the next day, and hence, suffer from vice of delay. She has contended that therefore, they can fabricate the false story against the accused. The evidence shows that there was no reason to fabricate any such story. The neighbours are independent witnesses. The complainant's evidence has

been corroborated by as many as 3 neighbours. Yet another statement of another neighbour was recorded. That neighbour, Kankuben has been not examined. There is no reason for further duplication.

49. The oral evidence of the 4 witnesses is corroborated by the medical evidence. The medical evidence of P.W. 5 the Doctor who drew the P.M. Report shows as many as 15 injuries on the person of Sangita. The first 5 injuries are fatal. They are incised wounds on the chest and stomach of the deceased. The evidence of the Doctor shows that the injuries on the chest had caused the rupture of the left coronary vessel and the left lung. The injury on the epigastrium caused the rupture of the spleen. The injuries on fossa and inguinal region caused the rupture of her peritoneum. They were caused by sharp weapon. They were sufficient to cause death. The person may die within half an hour after sustaining such injuries but it also depends upon the quantum of bleeding. These injuries were caused by a

knife. Upon the Doctor being shown the knife recovered in this case at the instance of the accused, he deposed that the injuries were possible by such knife.

50. The dying declaration of Sangita, made to as many as 4 witnesses, is corroborated by so many injuries several of which proved are fatal. The cause of the death given by the Doctor P.W. No.5 is hemorraegic shock leading to cardiac arrest.

51. The Doctor has reaffirmed in the cross examination that injury to the left coronary vessel itself is sufficient to cause death. He has also affirmed that there were 3 ruptures to vital organs and that every individual injury would have caused the death immediately but it depends on the gravity. The Doctor also has affirmed that such a person would not lose consciousness within 5 minutes or that such a person would not be able to speak after 5 minutes of sustaining such injuries. Hence, the Doctors evidence does not only

corroborate the actual stabbing by the accused, but also corroborates fact of dying declarations being recorded whilst she was conscious.

52. It may be mentioned that the knife recovered in this case had a bent blade. The knife has been recovered from the ground on the rear of the house of the accused. There is no evidence as to when it was bent. There is no evidence to show that it was bent before it was kept at that place or at the time of the attack. The Doctor's evidence shows that the blade of the knife would not bend while causing the injuries. It is contended on behalf of the accused that, therefore, the injuries could not have been caused by such a knife. In the absence of any evidence as to when its blade was bent, such an argument cannot be accepted. The injuries do not show them being caused by a bent knife. The injuries therefore, show that the knife was not bent at the time Sangita was stabbed.

53. The factum of stabbing by the accused is corroborated also by the injury suffered by him. He has stated to have suffered an injury to his right thumb. The knife which is recovered is a sharp edged weapon. The Doctor P.W. 11 has examined the accused. The Doctor identified the accused in Court by seeing the black mole near his left ear which was the identification mark mentioned by the Doctor at the time of the medical examination of the accused as deposed by her. The Doctor has deposed that on 16th March, 1999 she examined the accused referred by Daman Police. She has deposed in Court on 7th February, 2000, within a year of incident. Her evidence shows the nature, age, as well as the dimensions of the injury suffered by the accused. It was a cut 2 cm. X 1 mm. X 1 mm., on the right thumb front. The injury was 6 to 10 hours old. The accused had been sent for medical examination at about 7.30 a.m. Hence, the deposition of the Doctor showing the age of the injury is rather accurate. The Doctor has deposed that it could be caused by a sharp instrument. Upon being shown the knife

recovered in this case, she has further deposed that it could be caused by such a knife. She has been cross examined upon how such an injury can be caused. She has deposed that if one assaults by the knife, one would be holding the handle which could not cause the injury. Yet any slip of the hand of the accused whilst stabbing cannot be ruled out. The injury received by the accused shows his presence at the time of the offence. The fact that he was not found soon thereafter shows that he has fled. That lends support to the last part of the dying declaration made by Sangita to 4 witnesses. It further corroborates the evidence of Rukiben that she heard his scooter at about midnight and saw him go, and act which would rather be unusual at such an unearthly hour in the small village of Kachigam.

54. It may be mentioned that the accused gave his history to the Doctor. Strangely that history is **"***accidental cut while he was hitting his wife by a knife***"**. The prosecution has contended that, that is corroborative extra judicial confession made by the accused to the examining Doctor.

The learned Judge has relied upon this fact as one of the corroborating circumstances. That part of the evidence has not been put to the accused in his 313 statement. The Advocate for the accused Mrs. Katdare took strong exception of reading that evidence on record. We accept her contention. We choose not to read or take into account any such evidence. The oral evidence of the Doctor who identified the accused and whose evidence has been recorded within less than a year of the incident deserves acceptance. The fact that the right thumb of the accused was injured 6 to 10 hours before the examination by a sharp instrument such as the knife shown to the Doctor stands proved. We may mention that Sangita, is also capable of offering some resistance hence, some injury is likely to be caused to the accused himself in the scuffle. The anonymous call received by the Head Constable shows *'Maramari'* at that place. The accused could not have stabbed Sangita 15 times without receiving some resistance though the handle of the knife would have been in his hand

yet, at some point of time an injury to the thumb of the hand which held the knife could be reasonably expected. Such injury is shown by the prosecution and proved through the evidence of the Doctor. Though an attempt has been made in the cross examination to show that it could have been caused by any sharp object or even a broken table glass, there is nothing to show any broken glass at the place of the offence where the accused could have been injured 6 to 10 hours before 7.30 a.m on 16th March, 1999.

55. It is argued that no case diary entry is made about the fact that the accused was sent for such medical examination, and that the proper procedure was not followed by the Doctor. The case diary entries are truthfully shown to be made only with regard to the registration of the offence, the arrest of the accused, and the Police Officer P.W. 10 leaving for investigation and his return to the police station at 4.55 p.m. The absence of entry in station diary or case diary with regard to the medical examination of the accused, which is a

part of the investigation, and which, as per the aforesaid chronology, is shown to have been done after drawing of the panchanama relating to the recovery of the knife, shows that it is in order. It is a strong circumstance against the accused.

56. The clear, cogent acceptable and credible evidence of the 4 witnesses to whom dying declarations had been made, along with the corroborative evidence of Vijay P.W. 8 who was instrumental in bringing Nitin and his mother to the house of Sangita has been corroborated by the medical evidence with regard to the injuries suffered by the victim as also the accused. This evidence is in turn further corroborated by recovery of the knife which has been shown to both the Doctors who examined the dead body of the victim as well as the person of the accused.

57. The recovery of the knife was upon the voluntary statement offered to be made by the accused during

interrogation. He was interrogated from 2.30 a.m to 5.00 a.m, when the accused offered to make his voluntary disclosure. Panchas were called for recording the disclosure. The first disclosure was relating to the knife used by the accused in the commission of the offence. The panch was called in the early hours of the morning of 16th March, 1999. Since it was before daybreak P.W.6 initially deposed that he was called on 15th March, 1999. He then corrected his evidence to show that he was called on 16th March, 1999. The accused told him that he had kept the knife by the side of the room and led them in a jeep to his house. The accused went behind his house and unearthed the knife from near the wall. The blade of the knife was bent at its point. Panchanama was drawn which the witness has proved by direct evidence and which has been marked Exhibit-27. The witness has identified the knife shown to him. This panch is a respectable person from the immediate neighbourhood. He was Raghu's other son. He has deposed that he was the landlord of the house where the accused

resided. Nitin was his friend. Mrs. Katdare argued that therefore, his evidence is not reliable. There is nothing in law to discard the evidence of a panch who is a respectable person in the neighbourhood merely because he knows the accused or the complainant. In this case he knows both of them. The complainant is his friend and the accused was his tenant. Since there was a commotion in the neighourhood due to a grievous assault upon Sangita, the panch including other neighbours are expected to be awakened. He was therefore, called in the police station in the early morning hours. The cross examination of this witness shows how the accused made the voluntary disclosure. In fact that cross examination itself conclusively proves the execution of the panchanama. It is argued that since the knife was recovered from behind the accused's house, it must be taken to have been recovered from an open place. The evidence of this witness in paragraph 2 shows that it was unearthed from near the wall. It is therefore, not left open such as to be accessed by all in the neighbourhood.

The cross examination of this witness shows that the knife was buried though that was in the open place where any one can go. The knife is distinctive. It has a bent edge. That fact has been mentioned in the panchanama Exhibit-27 as also deposed by the witnesses. The evidence of the Doctor shows that the injuries on Sangita could not have been caused by the bent knife. The factum of the injuries is seen. The expected death has resulted. Hence, the knife was bent after the incident and before its recovery. It has remained so since then. It has been produced before us also. It has been shown to both the Doctors also. Both of them have deposed that injuries of the victim as well as the accused could have been caused by such a knife. The recovery of the knife therefore, cannot be discarded. It is a strong corroborative circumstance.

58. Another witness P.W. 9 who was the other panch has also been examined. He has also deposed about the recovery of the knife which was buried and recovered at the instance

of the accused. He has also described the knife, more specially the bent top.

59. This witness has further deposed about the second panchanama executed by him at 11 a.m on the spot of the offence. He is not the friend of Nitin. He is an independent neighbour from Kachigam. He has described the spot of the offence. He has deposed inter alia about dried blood stains on the ground and one empty bottle on the cot. He was called to the police station at 6.00 a.m. He was there till 7.00 a.m. There is a misprint of time in his deposition at one place, (he has mentioned 6.00 p.m. Instead of 6.00 a.m.) However, the other part of his evidence shows that he was in the police station till 7.00 a.m. And that he left the police station at 7.15 a.m. Mrs. Katdare drew our attention to paragraph 3 of his evidence where he had deposed that the accused had not stated anything in his presence and that he had signed the first panchanama in the police station. It is sought to be contended that, that is an incorrect procedure.

The witness has deposed about how the accused had taken them to his house and unearthed the knife. Various facts of investigation were done in this case one after another. The witness has deposed about the preparation about the first panchanama and about the recovery of the knife and thereafter the second panchanama about the spot of the offence. A stray sentence in his cross examination cannot upturn the entire evidence of the fact of the recovery of the bent knife. The fact that the accused took the witness and unearthed the knife would lend support to his evidence that he did not state about it in the police station; he only took the witness and recovered the weapon. Even the deposition about signing the first panchanama in the police station shows one of the acts done by the panch whilst he was being taken or brought to the police station. He has also deposed about the vehicle in which he was taken and brought. He did not know the number of the vehicle. His evidence is therefore, natural and not exaggerated.

60. So much evidence led by the prosecution shows the oral evidence corroborated by the medical evidence of both the victim and the accused and the recovery of the weapon which caused the injuries. Such evidence has to be read along with the fact that the accused tried to abscond after the commission of the offence. It was only because the Investigating Officer was diligent to immediately go out to arrest the accused, and the accused was caught. The case of he being on night shift has been nullified by the fact of his arrest on the scooter on a road which had no other vehicular traffic at that time as per the evidence of P.W. 10 the Police Officer.

61. The accused who was the husband of the deceased victim and who was expected to be in his house, or in the factory where he served if he had night shift must explain his absence from the place of the offence and/or his presence at his work place. The accused has done neither. A vain attempt of showing an alibi has been left

unsubstantiated.

62. The accused was last seen before the commission of the offence by Nitin, at about 9.30 p.m. When he went to his house with his mother, and returned home upon finding the accused not having night shift. The accused was last seen soon after the commission of the offence by Rukiben when he fled after midnight on his scooter and immediately before Sangita cried for help. The accused was not seen in his house after the incident. No acceptable explanation for his absence from the house has been given by the accused.

63. It has been held in the case of **Subramani Vs. State, (2003) 10 SCC, 185** that under such circumstances the burden shifts on the accused to explain the circumstances as to when and how he parted company with the deceased. The only response of the accused being of denial, it was held in that case that the only inference can be drawn against such an accused as the one of guilt. In that case the

accused was alleged to have raped and murdered, the victim who was a child. The accused was last seen with the deceased where her body was later found. He was not seen in his house after the incident. The death of the deceased was caused by strangulation. Paragraph 5 of the judgment sets out 8 circumstances relied upon by the prosecution which led to the inference about the unquestioned guilt of the accused. In that case the accused was seen near the place where the deceased was playing, (last seen together with the deceased), the deceased was never seen alive thereafter. Her body was found at that spot. Her body had a number of bleeding injuries. The accused was not seen in his house or in the village after the incident. The accused had no acceptable explanation for his absence. His clothes contained blood stains for which also the accused offered no explanation. He did not offer any explanation about when he parted company with the deceased. Upon appreciation of the evidence lead by the prosecution it was held that the lack of satisfactory explanation offered by the accused as to how

and when he parted company with the deceased led to the one and only conclusion that the charges of rape and murder stood proved.

64. This case is of all fours, the facts of that case. Even in this case the accused was in the house at 9.30 p.m. The accused was heard and seen going away on his scooter soon after midnight. Though he put his case to P.W. 1 that he was on night shift, he has not produced any evidence of such night shift work. The accused was not found in the house when the neighbours came. He was arrested 2 hours later on the road. He has offered no acceptable explanation for his absence. In fact in his statement recorded under Section 313 he has not offered any such explanation at all. The only inference which can be drawn is that it is consistent with guilt of the accused and completely inconsistent with his innocence.

65. Mrs. Katdare on the other hand has drawn our attention to the case of **Mujeeb Vs. State of Kerala, (2000) 10 Supreme Court Cases 315** in which it is held that when the

case rests on the circumstantial evidence, such evidence must be cogently and firmly established. The circumstances should form a chain pointing towards the guilt of the accused. It should be so complete that there is no escape from the conclusion that within all human probability a crime was committed by the accused and none else. In this case such a chain has been established.

66. In the case of **Lallu Manjhi Vs. State of Jharkhand, (2003) 2 SCC 401** relied upon by Mrs. Katdare the worth of the witnesses has been laid down. In this case the evidence of all the witnesses has been shown to be cogent and reliable.

67. Mrs. Katdare contended that the charge of murder be converted to the charge of culpebale homicide not amounting to murder under Section 304II. Mrs. Katdare drew our attention to the case of **Kalinder Bharik Vs. State of H.P., 2000, SCC (Cri.) 96** in which the charge of 302 was

converted to the charge under 304 II. In that case the P.M. Report showed all the internal organs and skull to be normal, none of the injuries were individually or collectively sufficient to cause death. The cause of death was due to excessive bleeding. This is not one such case.

68. The evidence of the Doctor P.W. 5 shows that first 5 injuries were sufficient to cause death. But the time of the death depends upon a quantum of bleeding. This is therefore, not a case for conversion of offence.

69. The evidence that has been appreciated by us shows that the case made out by the prosecution of the accused having committed murder of his wife Sangita has been proved beyond reasonable doubt. The learned Judge has rightly convicted the accused for such offence. The conviction is maintained. The Appeal is dismissed. We may clarify that the accused is sentenced to R.I for life with fine R.I. in default of payment of fine to the extent awarded by the learned trial Judge.

(SMT. ROSHAN DALVI, J.) (DR. S. RADHAKRISHNAN, J.)